(3) *Examples.* The following examples illustrate the application of this paragraph (b):

*Example 1.* A director anticipates that the taxpayer has only one item of property that can be seized and sold. This item is estimated to have a fair market value of $250.00. The director also estimates that the costs of seizure and sale will total $300.00 if this item is seized. The director is prohibited from levying on this one item of the taxpayer's property because the costs of seizure and sale are estimated to exceed the property's fair market value.

*Example 2.* The facts are the same as in *Example 1* except that the director anticipates that the taxpayer has 10 items of property that can be seized and sold. Each of those items is estimated to have a fair market value of $250.00. The director also estimates that the costs of seizure and sale will total $300.00 regardless of how many of those items are seized. The director is prohibited from levying on only one item of the taxpayer's property because the costs of seizure and sale are estimated to exceed the fair market value of the single item of property. The director, however, would not be prohibited from levying on two or more items of the taxpayer's property because the aggregate fair market value of the seized property would exceed the estimated costs of seizure and sale.

*Example 3.* The taxpayer has three items of property, A, B, and C. The director anticipates that the value of items A, B, and C depends on their being sold as a unit. The director estimates that due to high anticipated costs of storing or maintaining item B prior to the sale, the aggregate fair market value of items A, B, and C will not exceed the anticipated expenses of seizure and sale if all three items are seized. Accordingly, the director is prohibited from levying on items A, B, and C.

*Example 4.* The facts are the same as in *Example 3* except that the director does not anticipate that the value of items A, B, and C depends on those items being sold as a unit. If the director estimates that the aggregate fair market value of items A and C exceeds the aggregate anticipated costs of the seizure and sale of those two items, items A and C can be seized and sold. The director is prohibited from levying on item B because the high cost of storing or maintaining item B is estimated to exceed the fair market value of item B.

(c) *Restriction on levy on date of appearance.* Except for continuing levies on salaries or wages described in §301.6331–1(b)(1), no levy may be made on any property of a person on the day that person, or an officer or employee of that person, is required to appear in response to a summons served for the purpose of collecting any underpayment of tax from that person. For purposes of this paragraph (c), the date on which an appearance is required is the date fixed by an officer or employee of the Internal Revenue Service pursuant to section 7605 or the date (if any) fixed as the result of a judicial proceeding instituted under sections 7604 and 7402(b) seeking the enforcement of the summons.

(d) *Jeopardy.* Paragraphs (a) and (c) of this section do not apply to a levy if the director finds, for purposes of §301.6331–1(a)(2), that the collection of tax is in jeopardy.

(e) *Effective date.* These regulations are effective December 10, 1992.

[T.D. 8558, 59 FR 38903, Aug. 1, 1994, as amended by T.D. 8939, 66 FR 2821, Jan. 12, 2001]

### § 301.6331–3 Restrictions on levy while offers to compromise are pending.

*Cross-reference.* For provisions relating to the making of levies while an offer to compromise is pending, *see* §301.7122–1.

[T.D. 9027, 67 FR 77417, Dec. 18, 2002]

### § 301.6331–4 Restrictions on levy while installment agreements are pending or in effect.

(a) *Prohibition on levy*—(1) *In general.* No levy may be made to collect a tax liability that is the subject of an installment agreement during the period that a proposed installment agreement is pending with the Internal Revenue Service (IRS), for 30 days immediately following the rejection of a proposed installment agreement, during the period that an installment agreement is in effect, and for 30 days immediately following the termination of an installment agreement. If, within the 30 days following the rejection or termination of an installment agreement, the taxpayer files an appeal with the IRS Office of Appeals, no levy may be made while the rejection or termination is being considered by Appeals. This section will not prohibit levy to collect the liability of any person other than the person or persons named in the installment agreement.